

WASHTENAW COUNTY

Department of Environment & Infrastructure Services

Environmental Health Division

Regulation For the Inspection of Residential Onsite Water and Sewage Disposal Systems At Time of Property Transfer

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ARTICLE I

Purpose

Sec. 1:1 The Washtenaw County Board of Commissioners adopts this Regulation that states the procedures, standards and enforcement that shall be used by the Washtenaw County Environmental Health Division ("Division"), under the authority of the Washtenaw County Health Officer, to manage any residential premises containing an Onsite Water and Sewage Disposal System, ("OWSDS") in order to promote the safety, health and general welfare of the community as follows:

- Ensure a safe and adequate supply of drinking water for those homes served by an Onsite Water Supply System ("OWSS"); and
- Ensure the adequate disposal of sewage from homes served by an Onsite Sewage Disposal System ("OSDS"); and
- It is not the intention of this regulation to cause existing systems that are currently functioning, but do not meet existing construction standards, to be brought into compliance with such standards.

Rules Adopted

Sec. 1:2 This Regulation contains minimum standards and supplements the Rules and Regulations enacted by the Michigan Department of Public Health and Washtenaw County. In

addition, this Regulation supplements Michigan law as it relates to public health and environmental quality and shall supercede all local minimum standards previously enacted that are inconsistent with this Regulation.

Authority

Sec. 1:3 This Regulation is enacted pursuant to MCLA 333. 1101 et seq. as amended, MCLA 324.1701 et. seq., and MCLA 46.11, to protect the public health, safety and welfare of the citizens of Washtenaw County.

Jurisdiction

Sec. 1:4 The Public Health Officer shall have jurisdiction to administer and enforce the provisions of this Regulation. Nothing in this Regulation, however, shall be construed to restrict or abrogate the authority of any municipality, or incorporated city, village or township in Washtenaw County to adopt standards that are more restrictive. However, whenever an inspection relating to health or sanitation is required, no municipality shall issue a license without first having obtained written approval from the Health Officer indicating that the applicant has complied with the minimum requirements of this Regulation.

Effective Date

Sec. 1:5 This Regulation shall become effective in Washtenaw County when notice of its adoption by the Washtenaw County Board of Commissioners is published in a newspaper of general circulation within Washtenaw County, provided, however, that actual inspections shall not begin before January 3, 2000, to insure that a sufficient number of inspectors are certified and available.

ARTICLE II

Definitions

Sec. 2:1 The following rules of language shall apply to the text of this Regulation: The word "shall" is mandatory. The word "may" is permissive. When not inconsistent with the context, words in the present tense shall include the future and words designating singular numbers shall include the plural.

Words and Terms

Sec. 2:2 The following words and terms used in this Regulation, unless otherwise expressly stated, shall have the following meaning:

Authorized Agent

The term "Authorized Agent" shall mean any individual or corporation authorized, in writing, to act as the legal representative in all matters authorized by the seller or purchaser.

Environmental Health Division

The term "Environmental Health Division" shall mean the Washtenaw County Environmental Health Division.

Failure

The term "failure" is defined as follows: 1) the backup of sewage into a structure; 2) discharge of effluent onto the ground surface; 3) the connection of an OSDS to a storm drain; 4) liquid level in the septic tank above the outlet invert; 5) structural failure of a septic tank; 6) discharge of sewage into any stream or other body of water; 7) the liquid level in a disposal field above the outlet holes in the pipe of such field; 8) unsafe water sample; 9) substantial nonconformance with water well construction requirements; 10) substantial nonconformance with water well isolation from contamination source requirements.

Health Officer

The term "Health Officer" shall mean the Public Health Officer, the acting Public Health Officer or her/his duly authorized representative.

Municipality

The term "municipality" shall mean any incorporated city, village, or township within Washtenaw County.

OSDS

The term "OSDS" shall mean an onsite sewage disposal system.

Owner

The term "Owner" shall mean any person who has legal title to any premises.

OWSS

The term "OWSS" shall mean an onsite water supply system.

OWSDS

The term "OWSDS" shall mean an onsite water and sewage disposal system.

Person

The term "person" shall mean any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.

Premises

"Premises" shall mean any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, that contains any type of structure that is, was or will be inhabited either permanently or transiently, water well or septic tank, drains, drain field, underground tank or pipes or similar appurtenances containing sewage or other contaminants or combination thereof.

Health Code Board Of Appeals/Public Health Advisory Committee

The term "Health Code Board Of Appeals/Public Health Advisory Committee" (HCBA/PHAC) shall mean the Health Committee of the Washtenaw County Board of Commissioners.

Substantial Conformance

The term "Substantial Conformance" shall mean there is a minimal likelihood of degradation of groundwater and surface water, or risk to public health caused by improper construction or location of an OWSDS, or a malfunctioning OWSDS.

ARTICLE III.

Limitations on Sale or Transfer Of Property

Sec. 3:1 There shall be no sale, transfer or conveyance of a parcel containing an OWSDS until the following conditions are met:

- The seller files an evaluation report by a Washtenaw County certified inspector to the Division; and,
- The Division determines, based upon such report, that the OWSDS is acceptable, or any necessary remediation is completed, or assured and accepted; and

- The Division authorizes the sale, transfer or conveyance of the parcel.

Evaluations

Sec. 3:2 Each OWSDS in Washtenaw County shall be inspected and evaluated prior to the sale, transfer or conveyance of property upon which an OWSDS is located if certification has not been done within twelve months preceding the date of property transfer. Transfers exempt from inspections include:

- Transfer from a spouse.
- Change in ownership solely to exclude a spouse.
- Transfer subject to life lease or life estate, (until the life lease or life estate expires).
- Transfer to effect foreclosure or forfeiture of real property.
- Transfer by redemption from a tax sale.
- Transfer creating or ending joint ownership if at least one person is an original owner of the property or his or her spouse.
- Transfer to establish or release a security interest.
- Premises built within the previous twenty-four months prior to date of property transfer.
- Premises that shall be demolished and shall not be occupied after the property transfer.
- New homes that have not been occupied.

The owner of a premises containing an OWSDS shall have the system evaluated by a Division certified inspector. Persons certified to perform evaluations of an OWSDS shall meet the minimum standards in Sec: 3.6 of this Article. After the evaluation is complete, the Division shall send a letter to the owner or the owner=s designated representative and any prospective purchaser describing the functional status of the OWSDS and whether it is in conformance with the Washtenaw County Rules and Regulations governing the Supply of Groundwater and the

Disposal of Sewage and Human Excreta.

Sec. 3:3 Reports of evaluations shall include, but are not limited to:

- The address of the site.
- The parcel identification number.
- The name of the owner or owner's agent.
- The location of the system(s).
- A description of the current operational or functional status of the system(s).
- Identification of any necessary repairs or replacement of all or portions of the system(s).
- The results of a bacteria and nitrate drinking water test, and other water quality parameters as required by the Division.
- Other relevant or unusual observations related to the system (s).
- Recommendations to extend the life of the system(s) and to prevent the premature failure of the sewage system(s).
- Educational material(s) about system(s) maintenance that have been approved by the Division.
- Completed forms approved by the Division.

Sec. 3:4 A certified copy of the inspectors' evaluation report of an OWSDS shall be provided to the owner and a copy filed with the Division. Such reports shall be freely available to the public through the Freedom of Information Act, MCLA 15.231 et. seq.

Performance Standards

Sec. 3:5.1 The evaluation shall determine whether the system(s) adversely affects the public health and environment or violates any other applicable rules or regulations.

Sec. 3:5.2 The evaluation shall determine whether the OSDS structure and its operational status are in substantial conformance with the standards of this Regulation.

Sec. 3:5.3 OWSS shall be evaluated for:

- their proximity to sources of contamination.
- substantial compliance with State of Michigan construction standards.
- compliance with bacteria and nitrate water quality standards as a minimum with other water quality standards in areas of known water quality concerns.

Sec. 3:5.4 Water samples shall be collected and analyzed at a laboratory certified by the Michigan Department of Environmental Quality to determine the presence of coliform bacteria, nitrates, or other contaminants as determined by the Division.

Registration and Certification

Sec. 3:6 All inspectors performing evaluations under this Regulation must be registered with the Division and certified before undertaking any evaluations. All qualified inspector applicants must file an application with the Division, pay the County registration fee and satisfactorily complete a training course approved by the Division. Prospective inspectors must demonstrate knowledge of construction practices, operational standards as well as the causes and indicators of OWSDS failures. No evaluation reports shall be accepted from individuals not certified by the Division.

Sec. 3:7 An individual shall not be permitted to install, or replace an OWSS and/or OSDS without prior approval of the Division. This section does not preclude the requirements for permits where necessary.

Sec. 3:8 The Health Officer may de-certify any inspector under one or more of the following circumstances:

- The individual fails to comply with the Regulation.
- The Health Officer determines that the individual is incompetent.
- The individual is unable to properly perform an evaluation of an OWSDS.

- The individual is negligent in the discharge of his/her duties as outlined in the certification requirements.
- The individual submits false or misleading information.
- Significant information is missing from the evaluation report and/or is not provided within three (3) business days after being requested by the Division.
- The inspector does not maintain the required certification as required by this Regulation.

Sec. 3:9 The Division shall give written notice to an inspector before s/he is de-certified by the Health Officer. The inspector shall be given an opportunity at an informal meeting with the Division and/or the Health Officer to demonstrate why s/he should not be de-certified. Any inspector who is de-certified may appeal that decision by following the procedure in Article XIII of this Regulation.

Sec. 3:10 If an inspector is de-certified, re-certification shall be contingent upon completing the requirements established by the Division.

ARTICLE IV.

Responsibilities of Various Parties

Owner

Sec. 4:1 Owners are responsible for hiring certified inspectors to perform inspections under this Regulation prior to the sale of any premises that s/he owns. The owner must also secure a letter from the Environmental Health Division indicating the OWSDS complies with this Regulation before the sale of any premises that s/he owns. Owners are responsible for maintaining the OWSDS on their property and shall notify the Division if the inspector's evaluation report or septic tank cleaner's report indicates a failure of the system or the owner observes a failure of the system.

Environmental Health Division

Sec. 4:2 The Responsibilities of the Division are as follows:

- Administer and enforce this Regulation.

- Maintain the most current OWSDS evaluation report as long as the property is served by an OWSDS and for three years thereafter.
- Maintain a list of certified inspectors qualified to perform inspections under this Regulation.
- Require re-mediation where there is evidence of a system failure.
- Create and maintain a database of systems inspected, evaluated and re-mediated as well as newly installed systems.
- Establish criteria for the inspection of OWSDS and the certification of inspectors and make such criteria and related forms available to the public.
- Require risers, observation ports and other features to facilitate evaluations when issuing permits for installation of OWSDS.
- Issue authorizations for sale, transfer or conveyance of property.

ARTICLE V.

Fees

Sec. 5:1 Fees to cover expenses, including but not limited to overhead, labor, storage, training, etc., by the Division, may be adopted as provided in the Public Health Code (Act 368 of 1978 as amended). Fees shall be paid when inspection reports are filed with the Division. Fees must be paid before the property is transferred.

ARTICLE VI.

Failure

Sec. 6:1 When an OWSDS fails, as defined in Article II, the owner, agent or other responsible party shall contact the Division and shall complete all repairs as required by the Division.

ARTICLE VII.

Inspection Notification

Sec. 7:1 If, after reviewing the inspection, the Division determines that the OWSDS is not in substantial conformance as defined, then the property owner shall be subject to enforcement as provided in this Regulation. The Division shall notify in writing the owner and/or purchaser or transferee or other person with a legally recognizable interest in the property. This written notice shall be sent no later than five (5) business days after the determination is made or from the date that the inspection report of the premises is filed and reviewed by the Division. Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the non-conforming OWSDS.

ARTICLE VIII.

Corrective Action

Sec. 8:1 Upon receiving written notice from the Division of noncompliance with this Regulation, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed corrective action and contract for services in order to bring the affected system into compliance with applicable laws. In addition, the owner, buyer or authorized agent shall place into an escrow account a deposit of a surety or performance bond or cash in an amount equal to one and one-half times the estimated cost of the contract guaranteeing performance of such contract. The Division shall review the proposed corrective action and amend it as required to conform to federal, state and local laws, rules and regulations. All necessary corrective action shall be completed within one hundred eighty (180) days following Division approval of the proposed correction action plan. Once the Division gives final approval of the completed corrective action, the system shall be deemed to be in substantial conformance with this Regulation and any affidavit previously filed with the Registrar of Deeds shall be discharged. If an OWSDS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with the Division, that will immediately reduce or eliminate the impact of such failure until the full remediation plan can be implemented as described earlier in this Paragraph.

Sec. 8:2 A person who disputes any Division decision concerning the violation of this Regulation shall have the right to a hearing and appeal using the appeals process in Article XI. Any appeal shall not stay an owner=s, buyer=s or authorized agent's obligation to take measures to reduce or eliminate the impact of a failure until a full remediation plan can be determined and implemented.

ARTICLE IX.

Enforcement and Compliance

Sec. 9:1 If, after investigation, the Division believes that a person is violating these Regulations, the Division shall attempt to enter a voluntary agreement with the property owner to resolve the

violation. If a voluntary agreement cannot be reached, the Division may issue a violation notice to the owner. A statement of facts upon which the notice is based shall accompany the violation notice.

Sec. 9:2 The Division may, after presenting proper credentials and other documents as may be required by law, and upon stating the authority and purpose for the investigation, enter and inspect any property at reasonable times to ascertain compliance or noncompliance with this Regulation or Rules promulgated under this Regulation. This may include:

- Inspection at reasonable times of any parcel containing an OWSDS and related systems.
- Collection of evidence and information for the purpose of determining compliance with this Regulation or Rules promulgated under the Regulation.

Sec. 9:3 If an owner, transferee or purchaser does not comply with the requirements of this Regulation, a Health Officer or his/her duly authorized representative may record an affidavit that details the non-compliance with the Washtenaw County Registrar of Deeds.

ARTICLE X.

Specific Enforcement Options

Violation of the Regulation

Sec. 10:1 After learning that this Regulation has been violated, the HCBA/PHAC or the Health Officer or his/her designated representative may:

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Issue a Cease and Desist Order and/or suspend any permit, certificate or other approval issued pursuant to this Regulation to the owner or other party violating this Regulation, and afford the owner or other interested party Notice and Opportunity for Hearing.

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Request that Washtenaw County Corporation Counsel file a legal action to enjoin the violation. In addition, the Health Officer may seek to recover any and all costs related to correcting, removing or abating the violation.

Issuance of Monetary Civil Penalties

Sec. 10:2 If a local health department representative or Health Officer believes that a person is violating a provision of this Regulation or an order issued pursuant to this Regulation, the representative may issue a citation within ninety (90) days after the alleged violation is discovered. The citation shall state with particularity the nature of the violation, including reference to the Section of the Regulation alleged to have been violated, the civil penalty established for such violation, if any, and a right to appeal the citation pursuant to MCLA 333.2461 and Article XI of this Regulation. The citation shall be delivered or sent by registered mail to the alleged violator.

- Any party issued a citation may, within ten (10) days from the date the citation is issued, request an informal conference at which time the person may indicate why s/he believes that s/he has not violated this Ordinance.
- Any party issued a citation may appeal the citation to the HCBA/PHAC or its designated committee within thirty (30) days after the citation is issued. The appeal shall be conducted in accordance with Article XI of this Regulation.
- A person aggrieved by a final decision of the Health Officer or the HCBA/PHAC or its designated committee, may petition the Circuit Court of the County where the premises is located for review. The time period for appeal shall begin to run the day after the date of such final decision.

Schedule of Monetary Civil Penalties

Sec. 10:3 Monetary civil penalties may be imposed according to the following schedule:

- First violation: Up to: \$ 200.00
- Second violation: \$ 500.00
- Third and subsequent violations each: \$ 1000.00

Sec. 10:4 A civil penalty levied under this Section may be assessed for each violation or day that the violation continues. The civil penalty may be for a specified violation of this Ordinance or

promulgated Rule, that the Health Officer has the authority and duty to enforce.

Sec. 10:5 A decision by the Health Officer not to issue a citation shall not be construed as a waiver of any other rights or remedies authorized by law or this Regulation.

Conviction of Misdemeanor

Sec. 10:6 Any person who violates this Regulation is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than \$200.00 or both. Conviction by jury, court or voluntary plea and acceptance by court under this provision shall not waive any other claim for fines, costs, injunction or other relief authorized by this Regulation. Each day that a violation of this Regulation exists shall constitute a separate offense.

Assessment against the Property

Sec. 10:7 If an owner does not have his/her property evaluated as specified by this Regulation, the Division shall cause an inspection to be performed and may charge all costs and fees for the evaluation to the owner of the premises.

Sec. 10:8 If the owner or party violating this Regulation refuses on demand to pay such expenses incurred by the Department to abate, correct or remove a violation, unsanitary condition or nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of this State.

Right to Obtain Samples

Sec. 10:9 An inspection under Sec. 9.2 shall include the right to obtain samples where the Health Officer has reason to believe that there is a likelihood of contamination of surface water, ground water, water supply or other unsanitary conditions. Upon written notice, an owner or occupant of premises from which such inspection is sought shall co-operate with the Health Officer or his/her designated representative.

ARTICLE XI.

Hearings and Appeals

Sec. 11:1 If an owner or interested party is adversely affected by any decision under this Regulation, s/he may request in writing a Hearing before the HCBA/PHAC or its designated Committee within thirty (30) days of the date of such decision. The Health Officer shall issue a Notice of Hearing within fifteen (15) days after receiving the request. A Hearing shall then be held at the next regular meeting of the HCBA/PHAC (or its designated committee), scheduled for such purposes; provided, however, that a Hearing shall be conducted no later than sixty (60) days

after the Notice of Hearing is mailed to the owner or interested party. The HCBA/PHAC (or its designated committee) shall affirm, reverse or modify the contested decision by a majority vote of the entire Board. The decision by the HCBA/PHAC (or its designated committee) shall be in writing and state the reasons and grounds for such decision. A copy shall be furnished to the owner, any interested person, and the Health Officer within thirty (30) days of the decision.

ARTICLE XII.

Miscellaneous Provisions

Severability

Sec. 12:1 Each provision of this Regulation must be interpreted in a way that is valid under Michigan law. If any provision is held invalid, the rest of the Regulation shall remain in full effect.

Sec. 12:2 All amendments to this Ordinance shall be approved by the Washtenaw County HCBA/PHAC and the Washtenaw County Board of Commissioners after a public hearing required by Section 2442 of Act 368 of the Public Acts of 1978, as amended, has been held. All amendments shall become effective at a time provided for under Michigan law.